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Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Pershina, Y. (2017). The system of punishments in the Ancient Rome. *Modern European Researches*, 1, 78-86. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-50274-4>

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The system of punishments in the Ancient Rome

Abstract

The need to define the highest limit of criminal and legal impact on the criminal setting "ladder" of punishments in society defines the relevance of the studied problem. The purpose of the paper is to analyze and give the characteristic of the system of punishments in the Ancient Rome for crimes of public and private character. The leading research method is the system-structural method. The author studies the system of punishments in the Ancient Rome and concludes that it was applied according to the principle of justice, which was understood specifically in relation to living conditions of the antique society. The materials of the paper can be useful to scientists studying the Roman right, to students studying law and masters of law.

Keywords

system of punishments in the The Ancient Rome, death penalty, forced labor, exile, corporal punishments, imprisonment, penalty

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Introduction

Many figures of antiquity, in particular, during an era of the Ancient Rome comprehended the essence of punishments for the committed crimes. Nowadays possibility of death penalty as a punishment for a criminal offense is also a subject of public discussions. As N. Khomenko notes "it mentions political-legal, social-economic, moral-religious, cultural-psychological and other spheres of activity" (*Khomenko, 2004*).

The researcher N. P. Nikonova emphasizes that possibility of deprivation of life can be considered as a measure of criminal penalty. The specified term is multiple-valued and serves for designation of a limit of something. The highest limit of criminal-legal influences sets a system ("ladder") of punishments. It is caused by the essence of punishment shown in it (*Nikonova, 2004*).

In this regard, studying of the system of punishments in the Ancient Rome is actual, since the Roman right had a great influence on legal systems of the modern world. The purpose of the research is the analysis and characteristic of the system of punishments in the Ancient Rome for public and private crimes.

The following tasks were set to achieve the purpose:

- investigate history of the system of punishments in the Ancient Rome (the imperial period, the periods of the republic, principate, dominat);
- analyze structure of crimes against the government, religion and the Christian Church in Rome;
- analyze structure of crimes against personality in the Roman society;
- analyze structure of crimes against property in the Ancient Rome;
- define efficiency of this system of punishments.

The object of the research is the public relations, developed during historical and legal development of punishments as a social-legal phenomenon and state-legal institute in the Ancient Rome of system. The subject of the research is the analysis of standard-legal regulation of institute of punishment at various stages of the Ancient Rome development.

The major concepts used in this paper are "crime", "punishment", "criminal trial". The Roman right understands crime as designation of the requirement about the punishment made during the public charge. Criminal action was as the most dangerous to the Roman society (*Prudnikov, 2010*). The researcher A.A. Ivanov specifies that the crime in the Roman right was designated by the phrase '*crimen publicum*' (the state charge), which contained ascertaining of fault, bringing a charge from the state (*Ivanov, 2012*). According to the scientist O. A. Omelchenko a crime was an action made deliberately and with special malignity (*Omelchenko, 2000*).

According to the contents and orientation, punishment had to have legal character, i.e. to be the provided by the Roman right in connection with a concrete crime and to represent a public assessment of actions of the criminal (*Prudnikov, 2010*). According to

A.A. Ivanov, material compensation ("penalty fee") was the most widespread reaction to an offense in the ancient time. Later in practice of the Roman magistrates there was a concept "coercion" meaning application of punishment concerning various offenders (*Ivanov, 2012*).

The following definition of criminal trial is used here and further: it is the activity established by laws and other legal acts of government bodies allocated with appropriate authority on identification, prevention and disclosure of crimes, establishment of the persons guilty in their commission, application of criminal penalty measures or other influence, and also the legal relations arising in connection with this activity between the bodies and persons participating in it. The purpose of criminal trial is to protect the rights and legitimate interests of persons and organizations; protect the personality against illegal and unreasonable charge, condemnation, restriction of its her rights and freedoms.

Literature Review

The massif of sources of the Roman right for studying was the following: Law of the Twelve Tables (for example, about application of the death penalty for certain types of crimes), the Institutes of Gaius (for example, about punishments for theft, personal offense), the Digest of Justinian (for example, about purpose of punishments for "an insult of the greatness of the Roman people", embezzlement of public funds, conditions of carrying out interrogation with application of tortures, etc.).

We used comments of the Roman lawyers about crimes and punishments for them:

Julianus, Ulpianus, Paulus, Libanius, Themistius, et.al.

The XVI book of the Codex Theodosius (408 - 450) "About Universal or Catholic Church" is of great interest. The book presents the complexes of religious precepts of law, including the laws which contain the formulation of the concept "religious crime", defining punishments for crimes against Christians and Church.

Much attention was paid by the author to studying the treatise of the judge and teacher of Pisa university S. Bartolus (1313 or 1314 — 1357) "About distinction between the initial right and civil", since it reflects features of development of the initial right in the Roman legislation.

Theoretical basis of the paper are the works of Russian and foreign scientists studying the Roman right in its different aspects: P.G. Vinogradov, A.A. Vishnevsky, O.A. Omelchenko, A.A. Ivanov, M N. Prudnikov, et. al. For example, the famous scientists I.B. Novitsky and I.S. Peretersky gave a general characteristic of the obligations following

from delicts (offenses). The researcher C. Sanfilippo proved that it is necessary to allocate theft, stealing and robbery from such delict.

The big contribution to studying the subject was made by modern Russian historians-jurists. Topical issues of the Roman criminal law are discussed at scientific-practical conferences of different levels. K.V. Verzhbitsky analyzed the processes about "a greatness insult" in the Ancient Rome during the reign of Tiberius (*Verzhbitsky, 1999*), Yu.V. Pershina studied various aspects of the Roman criminal trial (*Pershina, (2015 (IV))*).

Materials and Methods

The methodological basis of the paper is the general methods (historical, logical, classification method) and a number of private-scientific methods. The main approach to the research is a system-structural method allowing to see integrity of the system of punishments including the separate interconnected parts in both development and structure of the developed system of punishments. From private scientific methods the author used chronological, retrospective, comparative, legalistic methods, methods of typology and actualism (*Prudnikov, 2010*).

Results

In the early Roman right, condemnation (criminal penalty) made abstract sense, the concrete form of its application was established at the discretion of the highest magistrates. With development of the criminal legislation, punishment became concrete depending on a look and concomitant circumstances of crime commission. It became the coercive measure appointed under sentence of court.

Gradually the developed Roman right developed some criteria for definition of a measure of punishment, according to an overall objective of criminal punishment and clarification of society from criminals, granting them in the power of the punishing gods.

According to the contents and orientation, punishment had to have legal character, i.e. to be the provided by the right in connection with a concrete crime and to represent a public assessment of actions of the criminal. Punishment had to be

concrete and connected with a crime assessment. On the social and legal purpose punishment had to make preventive and preventive sense, i.e. to correct people.

The principle of inevitability of punishment had the same purpose: it was impossible to leave the criminal unpunished for the interests of society, i.e. the other person could not think about crime commitment. The Roman justice interpreted inevitability of punishment in respect of its expediency. Social expediency of punishment often dominated over legal criterion.

Punishment had to correspond to a crime on legal justification. The Roman justice treated this principle in practical sense: compliance of a punishment form of public danger and severity of criminal act.

The Roman justice attempted to construct a system of hierarchical "ladder" of criminal penalties to define the principles of their definition for various types of crimes. A punishment, which had personal, especially physical, character admitted heavier, than property collecting (corporal influence stood "above" a fine on "ladder" of criminal penalties).

Mutual "absorption" of criminal penalties practiced. There were many situations, when a court appointed to criminal more punishments and they did not coincide on the real importance and consequences for the condemned. Therefore, more strict punishment began "to absorb" the moderated one (for example, the appointed to death was not punished to be sold in slavery, etc.) (*Prudnikov, 2010*).

The concrete way and method of punishment application were established by the law concerning a certain type of a crime, legal tradition or judicial discretion, proceeding from "quality" of a crime, according to the criminal's identity and the allowed types of punishments in the Roman legal practice. The main place was taken by punishments, when the criminal was exposed to condemnation from the people equal to him in the status, lost privileges, opportunity to encroach on a law and order in the future (*Omelchenko, 2000*).

The Roman right had a certain system of punishments. There were two big groups. The first group was made by punishments for serious crimes, which were called the Capitols ("the punishments concerning life") (*Ivanov, 2012*).

The death penalty (*poena capitis*) headed the "ladder" of punishments. It was appointed because of special public danger, impudence of a crime, infringement of foundations of the Roman society. Beheading and stabbing by a sword, hanging, drowning in the sea or river were usual ways of the death penalty during a classical era. The criminal's body during an era of paganism was given out to relatives for burial.

Special types of the death penalty were crucifixion on a cross, burning, giving at the mercy of wild beasts during circus representations, immurement in a wall and burial alive, dropping from the rock. In the Middle Ages, the body of the executed, as a rule, was not buried; it was given to desecration. The "house" types of the death penalty were expressed in suicide commitment (drink poison, open veins in a bathtub, etc.). The death penalty usually was followed by confiscation of property (*Prudnikov, 2010*).

In The Ancient Rome, the priestess goddess Vesta had a privilege. She had the right to pardon the criminal, if he saw her on the way to an execution place. The vestal had to swear that their meeting had inadvertent character (*Loginov, 2010*).

In the period of the Roman republic, the Esquiline field was one of the main places of sentence execution. Originally, the Roman cemetery was on the Esquiline hill. At the time of the Roman Empire, the Campus Martius was chosen as an execution place; its closed application became more widespread: in prison or other jails. During the Empire, the sentence could be carried out with a delay (from 30 days to one year) (*Omelchenko, 2000*).

There were two main types of forced labor: on mines (for "an insult of greatness of the Roman people", war crimes) and at school of gladiators (instructor, fighter, "doll" for trainings). The second type of forced labor was more favorable, as it gave a chance to receive release after successfully carried out fight (*Omelchenko, 2000*).

The condemned could be sentenced to work in fetters in mine and out of it (in particular, to ore melting, its sorting), and also to auxiliary types of works: most often they were carried out by women (*Prudnikov, 2010*). Deprivation of the national rights was a preliminary condition of this type of punishment for the Roman citizen. Thus, the condemned was considered as "an eternal slave" of the state (*Ivanov, 2012*).

In the period of the republic, there were such types of punishments, as "removal in exile" and exile (deportation). The property of the banished was confiscated. He lost legal status. Derogation could be maximum - in the form of deprivation of the rights of the Roman nationality (exile from a community, sale in slavery out of the Roman territory) - or partial. Partial deprivation of the rights of nationality followed after condemnation for a crime against relatives, disgraceful acts (*Prudnikov, 2010*).

Deportation usually was compulsory eviction on the island; there were cases of settlement in the remote Roman provinces on the won territories. The mode of exile could be various. If the condemned was sent from Rome without designation of the concrete place of residence, he could be in a place, where there were no objections of local authorities. He could be banished in a certain place, and the authorities watched he did not leave it (*Omelchenko, 2000*).

Exile (dispatch) meant "deprivation of the homeland, change of a residence and loss of protection of birthplace laws". Based on these provisions, it was traditionally considered: "There are three types of exile: residence ban in a certain place; residence ban in all places, except one; exile to the island" (*Ivanov, 2012*).

The sentence could provide possibility of homecoming after some time; if it was no term, the banished could not come back. The only unpunishable reason, when the banished could return from exile, was the desire to see the emperor or to have petition before him (if the emperor did not forbid such petition earlier) (*Omelchenko, 2000*).

The second group included less heavy punishments for crimes.

During the most ancient period, paid mutilation was allowed within a law of torts. Corporal punishment (flogging) was considered shameful: it was used only for slaves (they were beaten by a special scourge, which was painful and dishonoring tool).

Free Roman citizens were beaten by sticks or birches. Magistrate imposed this punishment in police-and administrative order. The bunch of birches with the axe enclosed in them was a sign of the official (lictors carried them). It softened public

and moral consequences of flogging. The most important was the fact that imposing of corporal punishments attracted restriction of some civil rights, including withdrawal of some property.

Imprisonment was allowed to slaves – for offenses, disobedience, refusal of testimony, etc. Prisons were in temples, underground rooms at circuses, schools of gladiators and other public institutions. There was no regulation of imprisonment terms; everything depended on administrative practice in each case (*Omelchenko, 2000*).

The famous Roman prisons were the Mamertine Prison near the Forum. It was the narrow and long room with a vaulted ceiling in rock. Its underground part (Tullianum) was used for execution. The executed bodies were pulled down from the Capitol Hill to Tiber. This last road received the name of "a ladder of sobbing". The Lautumius punishment cell was near the Capitol.

Ergastulums were in large manors. These were the rooms in the buildings standing separately on the territory of the estate, serving as a punishment cell for punished and prison for slaves. Also the special prison for the Roman citizens, where the creditor supported debtors using them for daily works, was called Ergastulums (*Ivanov, 2012*).

The penalty was a special type of punishment. Property collectings were appointed for small offenses. The penalty could be expressed in material and monetary forms. The penalty was applied in magistrate-comitial jurisdiction. Its application according to provisions of the law was often senseless, since over time property collecting turned into the sum, insignificant for the criminal (*Omelchenko, 2000*).

The Roman right divided all population on free people and slaves, the Roman citizens and non-residents, representatives of the highest and lowest estates. In this regard, application of punishment in each case was specific.

In the period of the Roman Empire, class accessory of the victim and criminal became the main criterion for type and measure of punishment. Senators, riders, decurio and some other categories of the population were exempted from penal servitude and forced labor, corporal punishments, etc. They were replaced by an exile. In the period of principate, privileged persons could be punished by death penalty only for murder of relatives; in the period of dominat - for murder, arson, magic (sorcery), "an insult of greatness of the Roman people".

Legionaries had some privileges. They were not punished by hanging, work on mines though on a number of crimes their responsibility was more strict, than for other citizens. The Roman justice was especially severe to representatives of the lowest estates of Romans and slaves. Here all range of heavy punishments was applied.

The criminal offense meant existence of criteria of the action, which were the cornerstone of offense. The Roman court had to define its reason. In definition of the crime maintenance, there was no distinction between by active and passive actions, which result was an offense. The difference between commission of crime and partnership in it, instigation, direct or indirect execution was not admitted. It was considered that the one, who agreed was the subject to the same punishment, as the one, who acted. It formed the basis for criminal liability for not informing in cases of crimes against the Roman people, the emperor.

These features of qualification of penal action in the Roman right were connected with features of understanding of criminal and legal fault as conditions of responsibility execution. The existence of fault (the subjective relation of the criminal to punishable action) admitted obligatory accessory of criminal liability definition. The Roman criminal law did not consider the relation of the guilty to the committed action. The main thing was what was made, who made it and under what circumstances.

There are no direct mentions of two forms of fault (intention and imprudence) in legislative texts and treatises on the Roman right. The Roman right recognized that existence of intention was obligatory for punishability of action. Unintentional actions, i.e. made on imprudence, improvidence, occasionally, etc. were not considered as criminal offenses.

At private delicts there were two forms of fault, when responsibility acted: deliberate infliction of harm and its careless causing. Deliberate infliction of harm is the heavier form of fault. Degree of imprudence could be various: rough imprudence or easy negligence.

Differentiating rough and easy negligence, the Roman lawyers were guided by abstract criteria: "good person", "careful owner". Rough imprudence was allowed by the one, who did not provide, did not understand that provided and "the average person" understood. Easy negligence in relation to the private delict was the behavior, that would not be allowed by the good, careful owner. Owing to this general prerequisite, the Roman right has the only form of criminal fault - the form of criminal intention.

The objective need in fault promotion for the Roman right in number of the principles of legal regulation was caused by three factors: barrier against prosecution of any offenders; indispensable condition of approachability of the legal purposes; additional criterion of an individualization of responsibility (*Prudnikov, 2010*).

The Digest of Justinian has the specific treatment of understanding of the Roman justice: "Justice is invariable and constant will to grant everyone his right... Justice is knowledge of divine and human affairs, science about fair and unfair" (*Isaeva, Mayak, 1992*).

Discussions

The Roman criminal law was a subject for historians of XIX - beginning of XX centuries. The big role played the German researchers, for example, T. Mommsen (the work "Roman Criminal Law"). Similar problems were studied in other European countries: britishmen A. Greenidge, J. Strachan-Davidson, frenchman P.F. Girard. It is possible to allocate common features of their works: the actual material was investigated, the analysis of reference base was given, the emphasis was placed on legal aspects of activity of the Roman criminal courts.

In pre-revolutionary Russia, F.F. Zelinsky (the subject - the Roman criminal trial) and I.A. Pokrovsky (the subject - bodies of criminal justice in the Ancient Rome from the imperial period to the late empire) wrote works on history of the Roman criminal law (*Khrustalyov, 2013*).

Modern Russian scientists brought the big contribution to studying initial and criminal law of the Ancient Rome. In particular, O.A. Omelchenko investigated development of criminal justice in the Ancient Rome (*Omelchenko, 2000*). A.V. Shchegolev researched the Law on "an insult of greatness of the Roman people" in

political history of Rome in I BC - I AD (*Shchegolev, 2000*). K.V. Verzhbitsky studied development of system of principate during the reign of Tiberius in 14-37 AD (*Verzhbitsky, 2000*).

The monograph of A.I. Boyko "The Roman and modern criminal law" is also of great interest. In particular, it gives the following assessment to the Roman state in respect of legislative activity: "The mighty empire was lost, but marvelous remains of its legal spirit still light up public life. This way the far and unknown quasars pulse the energy. For certain, this unfading light tones up criminal and legal reflections" (*Boiko, 2003*).

The subject of the paper was partially touched in dissertation work of S.V. Aleksandrovskaya, where the anti-corruption concept in the right of the Ancient Roman republic was studied (*Aleksandrovskaya, 2004*). A.V. Marey analyzed the obligations following from delicts in Alphonso X statement (*Marey, 2005*). D. A. Makarov studied the system of the right of the Byzantine empire (*Makarov, 2007*). I.S. Semenov considered international legal aspect of the right for life (*Semenov, 2009*).

M.N. Prudnikov allocated the following principles of the Roman criminal law: legality, equality of citizens before the law, justice, personal responsibility, inevitability of punishment (*Prudnikov, 2010*). A.A. Ivanov suggested to adhere to a certain classification of crimes, gave definition of the concept "punishment", used in this paper (*Ivanov, 2012*).

V.K. Khrustalyov studied activity of the Roman criminal courts in the period of the late Roman republic (*Khrustalyov, 2013*). B.A. Molchanov analyzed criminal-legal views on crime subject when forming legal bases in the states of the Ancient world (*Molchanov, 2014*). Yu.V. Pershina considered punishments for crimes against religion and Christian Church (*Pershina, 2015 (I)*), "an insult of greatness of the Roman people" (*Pershina, 2015(II)*), official and military crimes (*Pershina, 2016*) in the Roman criminal law, feature of criminal trial in the Ancient Rome (*Pershina, 2015(III)*).

The modern foreign researches concerning the general questions of the Roman criminal law contain works of A. Jones, R. Bauman, A. Riggsbi, O. Robinson, V. Kunkel. Extensive literature is devoted to problems of evolution of the Roman criminal legislation and activity of the separate constant criminal commissions: on cases of "a greatness insult" (de maiestate), extortion (de repetundis), illegal harassment (de ambitu), and violent acts (de vi) (*Khrustalyov, 2013*).

The carried out analysis of literature showed that the level of study of the subject is insufficient. Nowadays there is no the generalizing research devoted to the characteristic of the system of punishments in the Ancient Rome.

Conclusion

The system of punishments in the the Ancient Rome was applied according to the principle of justice, which was understood specifically in relation to living conditions in antique society.

Recommendations

The materials of the paper can be useful to the scientists investigating the Roman right, students studying law and masters of the right.

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